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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

MARY TOWNSEND COCHRAN,
Petitioner,

v.

GEORGE L. MORRIS and GIRARD TRUST BANK, EXECUTORS UNDER WILL, AND TRUSTEES UNDER DEED, OF MARY H. TOWNSEND, DECEASED; BRYN MAWR HOSPITAL; THE CHILDREN'S HOSPITAL OF PHILADELPHIA; FATHER FLANAGAN'S BOYS' HOME; BISHOP LEONARD'S CHARITIES, INC.; AMERICAN CANCER SOCIETY, PHILADELPHIA DIVISION, INC.; ESTATE OF JOSEPH F. MAGUIRE, DECEASED; RT. REV. MSGR. ALOYSIUS F. X. FARRELL; LILLIAN R. KELLY; EDWARD C. DURKIN, M. D.; ELIZABETH T. STOEBENAU; MOST REV. JOHN J. KROL, ARCHBISHOP OF PHILADELPHIA; ST. VINCENT'S HOSPITAL FOR WOMEN AND CHILDREN; WILLIAM C. SENNETT, ATTORNEY GENERAL OF COMMONWEALTH OF PENNSYLVANIA AS PARENS PATRIAE OF SUNDRY CHARITABLE BENEFICIARIES,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Mary Townsend Cochran prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Pennsylvania entered in the joint appeals in this case,

said appeals being from judgments in the Orphans' Court of Montgomery County, Pennsylvania designated in said Supreme Court of Pennsylvania as Appeals No. 42 and 43, January Term, 1968 in Estate of Mary H. Townsend, and Appeals No. 44 and 45, January Term, 1968 in Trust Inter Vivos, Mary Hanlon Townsend, Settlor.

1(a). OPINIONS BELOW

The Opinion of the Supreme Court of Pennsylvania in this case is officially reported in 430 Pa. 318. Said Opinion is printed in the Appendix herein at page 41. A Petition for Re-argument and Supplement thereto were denied by the Supreme Court of Pennsylvania Per Curiam without opinion and this is not yet officially reported. A copy of the notification to Appellant of the denial is printed in the Appendix herein at page 47.

1(b). JURISDICTION

(i) The judgment of the Supreme Court of Pennsylvania was entered on April 16, 1968 (the time of entry not being noted under Pennsylvania practice).

(ii) The Petition for Re-Argument and Supplement thereto filed on behalf of the Petitioner herein were denied on May 24, 1968.

(iii) The jurisdiction of this Court is invoked under the Act of June 25, 1948, c. 646 62 Stat. 929, 28 U.S.C.A. § 1257 (3).

1(c). QUESTION PRESENTED FOR REVIEW

In a consolidated will and inter vivos trust contest in a State Court was not the petitioner-contestant under the circumstances of this case denied a fair trial by the trial court contrary to the Due Process provisions of the Fourteenth Amendment to the Constitution of the United States by the direct and indirect denial of access to, withholding and suppression of relevant and material evidence

both oral and written, both before and during trial, which evidence was and is largely within the possession or under the control of various of petitioner's opponents?

1(d). CONSTITUTIONAL PROVISION INVOLVED

This case involves the following italicized provisions taken from Section 1 of the Fourteenth Amendment to the Constitution of the United States:

> ". . . *nor shall any State deprive any person of* life, liberty, or *property, without due process of law*; . . . ."

1(e). STATEMENT OF THE CASE

A. Background

This case arises out of a dispute over the proper devolution of the estate, with an approximate gross value of $6,000,000. of Mary Hanlon Townsend who died a resident of Montgomery County, Pennsylvania on October 1, 1965 in her 89th year (Record 2194a). Mrs. Townsend and her husband (Charles D. Townsend, who had died December 3, 1960 (Record 1074a)) being childless had raised and educated petitioner (Record 1013a-1017a). She is the blood niece of Mr. Townsend (Record 1012a) and she and the issue of herself and her husband, Cmdr. Christian H. Cochran, U.S.N. (Ret.), are the sole survivors of the Townsend family (Record 1022a).

For several years prior to Mr. Townsend's death, George L. Morris (resident partner in Philadelphia of the stock brokerage firm of Hornblower and Weeks who retired as of the day prior to Mrs. Townsend's death Record 703a) handled Mr. Townsend's financial affairs, paid his bills under a Power of Attorney on one of his accounts, and was his co-executor and co-trustee with what is now the Girard Trust Bank (Record 1440a). Lillian R. Kelly (who had previously been child's nurse for petitioner's children (Record 959a)) was his practical nurse (Record

960a). After Mr. Townsend's death Mr. Morris and Miss Kelly performed the same aforesaid personal services for Mrs. Townsend as they had performed for Mr. Townsend (Record 960a and 1457a). In addition to other physical infirmaties of old age, by the Spring of 1963 at least Mrs. Townsend could no longer read and her hearing, which had always been a problem, became much worse (Record 619a-624a; 1169a; 1374a).

Under Mr. Townsend's Will one-half of his residuary estate was left outright to Mrs. Townsend, and the other one-half in trust for her for life and thereafter in further trust to petitioner and ultimately to her issue (Record 821a).

The life long warm mother-daughter relationship between petitioner and her aunt continued to the end (Record 1037a) (despite efforts by Miss Kelly to interfere after June 1962) and there were welcomed periodic visits by petitioner and her family (who were living in Chevy Chase, Maryland) to Mrs. Townsend at her home in Bryn Mawr, Pa. (Record 1033a). The last such visit was about three weeks prior to the onset of Mrs. Townsend's lapse into a coma during the night of June 16, 1965 from which she never fully rallied prior to her death in October of that year (Record 2278a).

In June 1962 Miss Kelly had interjected herself into the discussion with adverse comments when petitioner undertook to advise her aunt of the pending marriage of petitioner's daughter for whom as stated above Miss Kelly had been child's nurse. Petitioner, resenting Miss Kelly's comments, abruptly silenced her which led to a bitter dispute, following which Miss Kelly never spoke to petitioner's family again. At Mrs. Townsend's direction Miss Kelly thereafter absented herself when petitioner and her family visited (Record 1045a).

In March 1963 after petitioner received a copy of the Executors' Account in her Uncle Charles' Estate a dispute

arose between her and Mr. Morris and the bank about the hasty dumping of all 44,000 shares of her uncle's Standard Oil of New Jersey stock shortly after his death (Record 2457a) as she had understood from her uncle that Mr. Morris had been named co-executor to prevent just such an occurrence. There were also questions over cash items accounted for in the estate which amounted to only about one-half of the $800,000 in cash which Mr. Morris had mentioned to petitioner's husband at Mr. Townsend's viewing and which figure he had also mentioned later to Mrs. Townsend as the amount of cash held by Mr. Townsend at his death (cf. Record 2461a).

Following Mrs. Townsend's death on October 1, 1965 it finally came out after two months of skirmishing that, despite her age and infirmities, there were no less than sixteen documents of a testamentary nature allegedly executed by her in the four and a half year interval between her husband's death in December 1960 and the onset of her final illness in June 1965, and the originals of fifteen thereof were still extant. A list and abstract of said documents (which gives some hint of the remarkable complexity of the scheme) is set forth in the Appendix herein at page 52. It will be noted that in all of said documents prior to those dated February 20, 1964 petitioner and her issue were left the bulk of the estate, and in those dated February 20, 1964 and later petitioner and her issue were virtually disinherited as she and her husband received but relatively small bequests.

The instruments dated February 20, 1964 also continue the pattern of granting or increasing benefits to those whose loyalty would be very helpful or necessary to Mr. Morris in the event of a contest, which policy is first particularly noticeable in the Codicil dated April 30, 1963 (which is shortly after petitioner first questioned items in Mr. Morris and the bank's Account in her uncle's estate).

Since the contest in this case involved not only the issue as to which instrument was the valid last will of decedent

but also the validity of the alleged inter vivos deed of trust dated July 11, 1963 and amendments, under which Mr. Morris and the bank held almost all of decedent's securities at the time of her death, two separate proceedings were required in the Orphan's Court of Montgomery County, Pa., one involving the will contest being designated by the caption:

In the Orphans' Court of Montgomery County, Pa.

No. 66,431

Estate of Mary H. Townsend, Deceased.

and another suit involving the validity of the trust which is listed under the caption:

In the Orphans' Court of Montgomery County, Pa.

No. 66,759

Trust Inter Vivos: Mary Hanlon Townsend, Settlor.

These two suits, together involving the totality of decedent's transferable property at the moment prior to death, were eventually consolidated for purposes of discovery and trial by order of the trial court on June 9, 1966 (Record 344a) and they have been for all practical purposes treated as one suit since.

Very early in the case, Petitioner became aware that because:

(1) After the death of Mr. Townsend, Miss Kelly had been in charge not only of the decedent's household but also the care of her person, and Mr. Morris had been in charge not only of her financial affairs but also to a great extent was the intermediary in the preparation of her testamentary documents; and

(2) most of the potential fact witnesses had an interest in upholding the documents which disinherited petitioner in view, inter alia, of their benefits thereunder.

most potential witnesses could be expected to be adverse, and that many or most of the relevant documents would be in the possession or control of petitioner's opponents.

B. Documents

Accordingly, petitioner proposed to obtain for purposes of pleading and trial under the then local discovery rules (which were almost as liberal as those of the Federal Rules of Civil Procedure):

An examination of all relevant or potentially relevant documents including:

> (a) all documents of a testamentary nature allegedly executed by decedent after the death of her husband together with her last will executed prior to the death of her husband on December 3, 1960 or copies where the originals did not exist; and
>
> (b) Copies of all memoranda, correspondence and writings relating to the aforesaid documents and/or the dealings of Mr. Morris, Girard Trust Bank and John Bishop, VI, Esq. or his firm (the draftsmen of the testamentary documents) with the decedent (Record 20a-27a). (In view of a family agreement that petitioner and her family were to inherit the Townsend Estate similar documents relating to Charles D. Townsend were also sought but the family agreement issue was ruled out of these proceedings by the Trial Court (Record 215a).)

A Motion for the production of the foregoing documents was filed on November 3, 1965 (Record 20a-27a) and as a result of this and other efforts by petitioner, she received copies of, and had access to for inspection, the requested alleged testamentary writings of decedent. But of the additional documents requested above she ultimately was given access only to certain records concerned with activity of decedent (and in part her husband) relating to her safe deposit boxes at the Bryn Mawr Trust Company and The First Pennsylvania Banking and Trust

Company, including the contracts for the boxes and certain access cards or tickets, together with a list of securities removed from her box on January 21, 1964 and placed with Mr. Morris and Girard Trust Bank as Trustees under the aforesaid Deed of Trust. In addition, she received certain medical, drug and Bryn Mawr Hospital records relating to decedent.

But the trial Court affirmed the withholding and suppression of memoranda, correspondence and writings relating to decedent's testamentary writings and/or the dealings of her financial adviser, Mr. Morris, her bank, Girard Trust Bank, and her lawyer, Mr. Bishop, by its Special Order filed March 7, 1966 ruling, inter alia, that no further or additional documents would be required prior to trial (Record 188a). At the trial, the Court then held in effect that petitioner was not even entitled to reach these records by subpoena for use at the trial (Record 433a-437a and Trial Court Opinion dated 3/29/67—Appendix at p. 28).

It is perhaps appropriate to note here some of the lengths to which the Trial Court went in denying access to these documents to Petitioner:

(a) On February 25, 1966 there had been an argument on Petitioner's Motion for the Production of Documents and under the rules in force at that time there seemed to petitioner to be little question but that she was entitled to the documents sought. Petitioner was thus completely unable to understand the Court's Opinion and Order of March 7, 1966 restricting discovery in view of what she thought were the applicable rules of court. A few days later, however, the Montgomery County Law Reporter carried notice that the Orphans' Court (consisting of one Judge) had issued a new Rule 36.1 (under date of March 4, 1966) which barred all discovery in the Orphans' Court except such as was specially allowed by the Court. This Rule 36.1 has since been facetiously referred to as the "Townsend Estate Rule".

(b) The Court below doubly insured that the documents sought would not only not be seen by Appellant but would not even be seen by any neutral party when it dismissed Appellant's Appeal from the Register of Wills' appointment of the Girard Trust Bank as Administrator Pendente Lite. Although the Court below in its Order dated December 1, 1965 held that an Administrator Pendente Lite should be appointed and directed the Register of Wills to grant such letters:

> ". . . to some fit and *wholly disinterested* person or person." (Emphasis ours.) (Record 49a)

it subsequently and not very consistently upheld the appointment of the Girard Trust Bank in spite of all of said bank's following conflict of interest disqualifications:

(1) Girard Trust Bank as Co-Executor was one of the Proponents of decedent's last "Will" dated June 14, 1965. The Administrator Pendente Lite would presumably receive temporarily records, such as cancelled checks, belonging to decedent. In its efforts to qualify as Co-Executor under said "Will" it was interested in withholding said checks from petitioner to the extent that they might assist in her attack on said "Will".

(2) Girard Trust Bank was the bank in which decedent maintained her principal personal checking account, subject only to her personal signature. If, as believed by petitioner, no check after sometime at least as early as 1963 bore decedent's own signature, said bank for this reason was not a wholly disinterested person.

(3) Girard Trust Bank was Co-Trustee of the Estate of Charles D. Townsend in which decedent was the initial life beneficiary. As such Co-Trustee it might have been required to account to itself as Administrator Pendente Lite. For this reason it was not a disinterested person.

(4) Girard Trust Bank was Co-Trustee of an Inter Vivos Deed of Trust allegedly executed by

decedent but under attack by petitioner as a forgery. For reasons similar to those mentioned under sub-paragraph (1) above, said bank was not a disinterested person.

There is more than a little irony in the lower Court's position with respect to documents. Petitioner was permitted to interrogate at length, by way of cross-examination (and for the most part without objection), decedent's attorney-scriveners as to their versions of all that took place with the decedent relating to the testamentary documents in question, going into the conception, initiation, drafting and execution of all testamentary documents. Yet the production of whatever written evidence there might be either to substantiate or refute the oral testimony of these hostile witnesses, could not be obtained and these writings become impregnably protected by some high but undefined privilege, or by some obscure "irrelevance".

C. Witnesses

Petitioner sought to take the deposition of some thirty-three witnesses, all but one or two of whom were either listed by her opponents in answers to interrogatories as persons having relevant information, had something to do with the decedent's alleged testamentary documents as witnesses, typists, notaries, etc., or were known to have had repeated contact with decedent during the period in question. However, the trial court limited petitioner to the taking of six depositions and the *court picked the six to be deposed!* (Record 188a-189a).

It might have been (though it is unlikely) that, if petitioner had subpoenaed all these other twenty-seven persons for testimony at trial, they would have been heard. But many of these persons had an interest in the questioned documents adverse to petitioner and petitioner might have been unable before the end of the trial to check their testimony and refuste it if it were false. The

practical denial of access to these witnesses was approved by the Pennsylvania Supreme Court on the ground that petitioner was merely involved in a fishing expedition and that excuse covered denial of access even to those witnesses whom petitioner's opponents listed as relevant witnesses in answers to interrogatories.

Petitioner did however of necessity call certain of these adverse witnesses and was permitted to question them as on cross-examination at trial. But when she did so, she ran into further suppression of evidence through restriction of the cross-examination. For example, Philip Price, Esq. appeared as a witness on the Codicil and Deed of Trust Amendment dated February 20, 1964 which instruments were the first purporting to disinherit petitioner.

Mr. Price's testimony flowed on with composure and self-assurance until he emphasized the fact that the decedent was not a person who vacillated but was one who knew what she wanted and, although a gentle person by nature, was capable of making her wishes known clearly and firmly and did so.

In view of the alleged firm mindedness of decedent on February 20, 1964, as contrasted with the fact that only two and one-half weeks later, on March 6, 1964, Mrs. Townsend allegedly revoked the February 20, 1964 instruments and executed others which eliminated the Philadelphia Museum of Art as one of the residuary beneficiaries, Mr. Price was then asked when he first learned that Mrs. Townsend was dissatisfied with the instruments dated February 20, 1964. Quoted below are excerpts from the Notes of Testimony which followed (Record 833a-836a):

Q. When were you first made aware that Mrs. Townsend was not satisfied with this will?
A. After the new one had been executed.
Q. That was on February 20th?
A. No, the will that—

Q. You mean the—

A. (Continuing)—I witnessed was executed on February 20th, and she changed it, I think, by a codicil dated March 6th.

Q. Right.

A. And, I didn't know until after March 6th that the change had been made. I had been away.

Q. When did you leave?

A. I couldn't tell you that offhand, either. It was shortly after the 20th of February; perhaps the last week in February, and I was gone for maybe ten days, two weeks, perhaps. I knew nothing about the change, either being suggested or desired or accomplished, until after I returned.

Q. Do you recall where you went at that time?

A. To the West Indies.

Q. By ship?

A. No, I went to the West Indies on a cruise on a ketch, for a week or ten days.

Q. On a ketch?

Could you give us the name of the ketch?

THE COURT: Mr. Eichman, please. We will be here forever.

Please get down to relevant matters.

MR. EICHMAN: I would like to have the name of the ketch.

THE COURT: All right. I will let him give it to you.

BY MR. EICHMAN:

Q. What was the name of the ketch?

A. It was a private ketch chartered by Mr. Mortimer Newlin and Mr. Wilfred Battles and me, for a week or ten days. The ketch was a—ninety feet long; she had a crew of eleven, and I can't, for the life of me, think of her name.

If it comes to me, I'll tell you.

Q. Out of what port?

A. Well, I got aboard at Martinque and we sailed to English Harbor.

Q. How did you get from Philadelphia to Martinique?

MR. MARUTANI: I object.

THE COURT: Is this relevant, Mr. Eichman?

MR. EICHMAN: Yes, it is, your Honor.

THE COURT: Show me how it is relevant?

MR. EICHMAN: It is relevant to verify the fact that he was in Philadelphia on February 20th.

THE COURT: Do you mean to say he was not in Philadelphia?

MR. EICHMAN: I don't accept it as a fact, your Honor.

THE COURT: I sustain the objection and grant you an exception.

MR. EICHMAN: Thank you, your Honor.

THE COURT: Are you saying to me that Mr. Price was not in Philadelphia on February 20th?

MR. EICHMAN: I don't say that, your Honor. I merely say that I have the right to question it.

THE COURT: Do you have any evidence that he wasn't?

MR. EICHMAN: I may have after he tells me—he gives me his itinerary and I can check it. I may not.

THE COURT: I have ruled. I sustain the objection.

The morning following the above testimony, proponent's trial counsel stated for the record that the name of the yacht that Mr. Price boarded at Martinique allegedly right after February 20, 1964 was the "Harbinger." (Record 850a)[1]

---

[1] It is respectfully urged that the Court below was never more wrong than when, after having first denied Appellant the right to take Mr. Price's pretrial deposition, the Court at trial then refused to permit Appellant not only to test Mr. Price's veracity, but also to establish whether or not his testimony was even physically possible through questions intended to establish whether or not he was even within the boundaries of continental United States on February 20, 1964. After Mr. Price testified so positively that he was personally present on that date in Mrs. Townsend's home in Bryn Mawr, Pa. and saw her, at the advanced age of 88 years, sign the

Contrary to the statement in the Pennsylvania Supreme Court Opinion (Appendix at page 46), however, neither Mr. Price's counsel nor Mr. Price have ever given the desired details concerning his itinerary, with dates and modes of travel from the time he left Philadelphia on this trip to the West Indies until his return. Also contrary to the inference that might be gathered from the aforesaid statement in the Pennsylvania Supreme Court's Opinion, Petitioner has never abandoned her efforts to obtain the withheld information. (Cf. Appendix at p. 46 par. 1).

There is still another type of suppression of evidence in this case.

Charles A. Appel, Esq. (a member of the Bar of the District of Columbia and of this Court, who founded the Federal Bureau of Investigation's Questioned Documents Laboratory (Record 865a) and who was conceded by the trial court in its Opinion to be "a highly competent expert" (Appendix page 34), not only testified that in his opinion all of the testamentary documents allegedly executed by decedent after 1962 were forgeries, but also graphically demonstrated the basis of his opinion (Record 872a-932a). He was not cross-examined and no rebuttal handwriting expert testimony was offered. All of this, was held by the trial court (sustained by the Pennsylvania Court) to be entitled to little or no weight in view of direct testimony of decedent's execution thereof by witnesses found credible by the trial court (Appendix page 35).

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papers which first disinherited Appellant whom she had raised and loved a lifetime as a daughter in favor, inter alia, of two of Mr. Price's favorite charities, it did not seem conceivable that the Court below could have denied Appellant the only opportunity she had at trial to show, if such were the case, that Mr. Price's word picture of the will signing at decedent's residence on February 20, 1964 was entirely wrong. Nevertheless, this is exactly what the trial court did and Pennsylvania Supreme Court approved as a proper exercise of discretion.

However, there was, inter alia, one alleged amendment to the alleged deed of trust in question that was so obviously signed by decedent's housekeeper-nurse (although one of the "credible" witnesses also testified that decedent signed this amendment) that both the trial court and the Pennsylvania Supreme Court found it expedient not to attempt to mention it or explain it away, and they did not even include it in their enumeration of the amendments to the deed of trust. Some notion of how obvious this all is may be gathered from a glance at Panels I and II reproduced in the Appendix at page 51. Panel I consists of admittedly genuine signatures of decedent. The first signature on Panel II is taken from the *unmentionable* amendment dated January 17, 1964 and the second signature on Panel II is the name of the decedent written by the housekeeper-nurse during her deposition in this case (Record 1325a).

If even a Justice of the Supreme Court of the United States took pen in hand to write his signature with his vigorous young law clerk "assisting" by the latter's enclosing his hand over that of the Justice, it is a certainty that their combined efforts would not and could not produce a result that would perfectly resemble the handwriting of the law clerk. Yet that kind of "assistance" by the housekeeper-nurse is the only explanation that she could suggest to explain the similarity of the two signatures reproduced on Panel II in the Appendix (Record 1324a. Cf. also Record 1215a).

1(f). FEDERAL QUESTION RAISED.

A. In the Trial Court.

(a) In March 1966 petitioner had filed an appeal in the Supreme Court of Pennsylvania, inter alia, from the Opinion and Order of the Trial Court dated March 7, 1966, which first limited petitioner's discovery and which appeal was quashed presumably on the ground that the

question was then interlocutory. The notice of this appeal to the Trial Court (Record 192a) reads as follows:

> "II. Appeal From Your Honorable Court's Special Order or Decree Barring Caveator From Access to Any Additional Documents Prior to Trial, and Limiting Caveator's Taking of Depositions Prior to Trial to the Six Persons Named:
>
> (1) Your Honorable Court's directing argument on February 25, 1966 on the limited subject of . . . . "Objections of Girard Trust Bank and George L. Morris to contestant's interrogatories and depositions and their motion for a protective order" . . . (by Order appended to Opinion sur Preliminary Objections to Supplemental Caveat, which order was also dated February 18, 1966 but from which no appeal is taken) followed by the court's hearing argument from Caveator's opponents on matters going beyond this limited question over the objections of Caveator's counsel, and despite the fact that the facts necessary for said argument were not yet in the record, was such a violation of the procedures indicated by Sup. Ct. O. C. Rule 31 and Pa. R.C.P. 1501 and 2099 as to amount to a lack of due process under the Pennsylvania and Federal Constitutions."

(b) Questions of due process and fair trial were raised on behalf of Petitioner at various points in the Trial Court. It is clear from the colloquy between the Court and counsel (which appear in the Record at 353a-354a, which is reproduced in the Appendix hereto at page 49) that Petitioner persisted in her preservation of these rights. As will be seen from a reading of the aforesaid Record, at the opening of trial, after copies had previously been given to the Court and counsel, Petitioner filed the original of a document entitled "Objections and Requests for Exceptions", which is referred to by both the Trial Court and counsel as a "motion", which "motion" reads in part as follows:

"I. Re Opinion and Special Order Sur Objections to Caveator's Interrogatories and Depositions Entered March 7, 1966 (Filed Under No. 66,431).

"A. Caveator-Contestant, having already objected to the above Opinion and Special Order by appealing therefrom to the Supreme Court, has never waived said objections and now restates the same by attaching and incorporating herein the applicable paragraphs of Notice of Appeal to the Ruling Judge under Supreme Court Rule 63, and respectfully requests "an exception on account thereof. . . ." (Record 273a)

(c) The notice of appeal to the Supreme Court of Pennsylvania addressed to the Trial Court on the instant appeal reads in part as follows:

"The reasons for the appeals appear in the Petition to Set Aside Final Decree dated March 29, 1967 attached as Exhibit B to the Petition for Leave Nunc Pro Tunc filed on April 21, 1967 on behalf of Mary Townsend Cochran, Caveator-Contestant in the above proceedings." (Record 317a).

The Exhibit B referred to therein contains, inter alia, the following assignment of error:

". . . (d) Granting Contestant leave to complete her discovery as requested in her motions in the record, which motions are incorporated herein by reference thereto, pursuant to the principles announced in *Thompson Will*, 416 Pa. 249, and after completion thereof to file a final amended caveat and complete her case; . . ." (Record 312a).

One of the "motions" referred to in (d) above is petitioner's Objections and Exceptions submitted to the Trial Court at the opening of trial, the relevant portions of which are quoted under (b) above.

The Trial Court did not pass upon the constitutional question with relation to discovery, stating merely that the petitioner's claim to the right of discovery was based

upon *Thompson Will*, 416 Pa. 249 (which was only one of the grounds advanced) and holding that the discovery allowed was within the rule of *Thompson Will* (see Opinion of the Trial Court—Appendix at pages 27 and 37).

B. In the Supreme Court of Pennsylvania

This question was raised by petitioner in the following manner in her Brief to the Supreme Court of Pennsylvania:

1. "STATEMENT OF FIRST QUESTION INVOLVED.

1. Where the validity of documents of a testamentary nature was under broad attack, did not the Court below err, in limiting Contestant, by a series of opinions, orders and rulings, to deposition access, for purposes of pleading and preparation for trial, to only six individuals arbitrarily chosen by the Court for said purposes out of more than thirty persons having potentially relevant and material information, and in denying Contestant subpoena access even at trial to relevant or potentially relevant written material? (*Negatived below.*)"

"SUMMARY OF ARGUMENT THEREUNDER.

Among Proponents of decedent's alleged Will and Deed of Trust were decedent's housekeeper-practical nurse, her physician, her financial-adviser, her attorneys, her bank, and alleged trustees who among them had in their corner all of the witnesses on the sixteenth testamentary documents allegedly executed by decedent after her husband's death in December, 1960, and further were in possession of most of the documentary material necessary for Appellant to plead and prepare for trial. Despite this, the Court below kept a tight lid on discovery and thus violated not only the liberal discovery requirements of *Thompson*

Will, 416 Pa. 249 but even the fair trial requirements of due process."

2. "STATEMENT OF SECOND QUESTION INVOLVED.

2. After an attorney testified that he saw decedent sign allegedly forged instruments, did not the Court below err in ruling out certain cross-examination bearing on whether or not said attorney was even in the country on the date involved? (*Negatived below.*)"

"SUMMARY OF ARGUMENT THEREUNDER.

One of the subscribing witnesses to the "Codicil" and "Deed of Trust Amendment" dated February 20, 1964 which first disinherited Appellant testified that he saw decedent sign them in her home in Bryn Mawr, Pa. on said date and then left for the Caribbean. The Court below would not permit Appellant's counsel to follow up questions designed to determine whether said witness actually left the United States prior to February 20, 1964, thus violating due process or at least abusing its discretion on a critical issue."

3. In the Argument as evidenced by the following excerpts:

"However the Court below was not able to accomplish said purpose (if that was its purpose) without material errors of fact and law and without a departure from due and established procedure so basic as, inter alia, to violate the due process clauses of the Pennsylvania and Federal Constitutions . . . ." (Brief pg. 23).

". . . then before it can be held that Appellant has received even the semblance of a fair trial she must be given the same access to these checks and

other documents as the Proponents had." (Brief pg. 36).

4. The Supplement to Appellant's Petition for Re-Argument reads in part as follows:

> "In view of the denial so far of access to proper cross examination and discovery, does not what Appellant ask go far beyond the question of a reasonable exercise of discretion of the trial court to the very question of basic due process and the requirements of a fair trial under any rule of law, including that imposed by the Federal Constitution via the XIV Amendment thereto?"

The Supreme Court of Pennsylvania did not pass specifically on the issue of due process. However, it did dismiss generally with the following language the contentions raised by petitioner which were not specifically discussed in the Opinion:

> "We have carefully considered all of appellant's contentions, and find no merit in any of them." (Appendix at page 47).

1(h). REASONS FOR GRANTING THE WRIT

It is hoped that the Supreme Court of the United States will be able prima facie to agree with Petitioner's contention that the Pennsylvania State Courts effectively denied her a fair trial under circumstances set forth above and that the denial was flagrant despite studied efforts to comply with the procedural formalities.

If your Honorable Court cannot so agree that will end the matter, so far as this Petition is concerned.

But if Petitioner's contentions do seem to have merit, then the basic question on this Petition might be not only whether the matter involved with respect to its nature and amount is substantial, but also whether public as well as private rights are affected.

It can hardly be gainsaid that, subject to proper controls, the right of a person by will to direct the disposition of his property after death, whether much or little, and the right of a family or others to inherit from those who have preceeded them, have long been cherished rights of all men and held evidence of a free society. This being so, the amount involved might not be critically important but if it is, since the right to several million dollars is in dispute here, this case would qualify on that score.

It would likewise seem true that a particularly flagrant denial of due process in a trial in a state court involving important property rights if not corrected will place in jeopardy the property rights of all who are compelled to litigate their property rights in those courts by inviting repetitions of the denial in subsequent cases.

The protection of the public against violations of the due process or fair trial provisions of the Fourteenth Amendment by the State Courts has been an obligation which this Court has in recent years been particularly alert to assure despite the most vigorous opposition and vituperation against it. Although most of your current cases involve the deprivation of the higher rights of life or liberty as distinguished from property, nevertheless all of these rights including property are guaranteed in the same phrase and in the same terms, perhaps because those who drafted the Fourteenth Amendment recognized that they are, to a great extent, interdependant.

We respectfully urge that this is indeed a case which cries out for a reaffirmation of the federal requirement that State Courts may not deprive persons of property without due process, and that State Courts which fall into error in this regard may not safely escape review by failing specifically to rule on due process and fair trial questions in cases involving property rights any more than they could escape review in cases involving personal rights. If a review is not granted by this Court in an

appropriate case then the Fourteenth Amendment could soon become a dead letter in so far as property rights are concerned.

1(j). CONCLUSION

The size of the large record in this case is grossly deceptive. If there are as many as one thousand relevant documents and one hundred witnesses in a case, a litigant might be very effectively denied a fair trial under the guise of the greatest fairness by the suppression of a single critical document or witness. And when the suppression is as broad as it was in this case, petitioner having been unable to evaluate the evidence which she has in light of the missing parts in the hands of her opponents, she was forced to put into evidence just about everything that she could get in.

No cases were cited in support of the granting of this petition in view of the fact that it is addressed to the broad discretion reserved to itself by this Court in the forepart of its Rule 19 and further because most if not all of the recent Fourteenth Amendment due process cases have involved personal rights as distinguished from property rights. But Petitioner has assumed, in the absence of a case to the contrary, that the Fourteenth Amendment in its entirety is still a vital part of the Constitution of the United States.

Petitioner's opponents might be expected to urge that she did not sufficiently preserve the Federal Question. If this point is reached, as Petitioner hopes it will be, Petitioner respectfully suggests that the Federal Question was more elaborately preserved here than it was in many of those personal rights due process cases wherein Certiorari was granted by this Court.

WHEREFORE, for the foregoing reasons, it is respectfully urged that a Writ of Certiorari be issued in this case.

Respectfully submitted,

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